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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,460	02/27/2002	Connie L. McFarland	01-4952	1828

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EXAMINER	
JOYNES, ROBERT M	

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/085,460	MCFARLAND, CONNIE L.	
	Examiner	Art Unit	
	Robert M. Joynes	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *02/27/02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 10, 11 and 24are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 11 recite the limitation "antiseptic" in line 5. There is insufficient antecedent basis for this limitation in the claim. Both of these claims depend upon Claim 1 and Claim does not recite the inclusion of an antiseptic. Therefore, Claim 10 and 11 lack antecedent basis for such a limitation.

Claims 2 and 24 recite trademarks in the claims. "If the trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of the 35 U.S.C. 112, second paragraph. *Ex parte Simpson,* 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used to properly identify any particular material or product." MPEP 2173.05 (u). Appropriate correction is suggested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Fotopoulos (CA 2107649). Fotopoulos teaches a topical composition for treating hemorrhoids or open wounds for healing treatment comprising cumin, olive oil and garlic (See the entire document and claims). It is the position of the Examiner that the same composition is taught for application in the same manner for the same affected areas of the skin to the same hosts. Therefore, the Examiner sees no distinction between the prior art and the instant claims. Both are ointments compositions used to treat open wounds to enable the healing process.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fotopoulos. The teachings of Fotopoulos are discussed above. Fotopoulos does not

expressly teach the same exact concentration ranges for the recited components. It is the position of the Examiner, absent a clear showing of criticality that the determination of particular concentrations is within the skill of the ordinary worker as part of the process of normal optimization.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to vary the concentration of the individual components.

One of ordinary skill in the art would have been motivated to do this to prepare various compositions that are suitable for a variety of hosts that all achieve the expected same result for treating open wounds and to prepare said composition is a safe and effective dosage.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claims 2-4, 6-22, 24, 25, and 27–32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 5863938) in combination with Fotopoulos (CA 2107649). Martin teaches a composition for treating wounds that is known as Neosporin. This composition comprises an antibacterial agent wherein the antibacterial agent is bacitracin, polymyxin and neomycin (Col. 52, Claims 1-3). This composition is used for treating open wounds as well as hemorrhoids (Col. 19, lines 32-56). The composition can further comprise perfumes or flavorants, such as peppermint, vanilla, lemon, (Col. 23, lines 18-23; Col. 26, lines 21-26).

Martin does not teach the inclusion of cumin as part of the composition.

Fotopoulos, as stated above, teaches a composition for treating open wounds and hemorrhoids that comprises cumin, oil and garlic.

As stated in In Re Kerkhoven, 205 USPQ 1069, 1072 (CCPA- 1980), "It is prima facie obvious to combine two compositions, each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose. As this court explained in Crockett, 126 USPQ 186, 188 (CCPA- 1960), the idea of combining them flows logically from their having been individually taught in the prior art.

Again, it is the position of the Examiner that the same composition is taught for application in the same manner, for the same affected areas of the skin, to the same hosts. Therefore, the Examiner sees no distinction between the prior art and the instant claims. Both are ointments compositions used to treat open wounds to enable the healing process.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine the composition of Martin with that of Fotopoulos effectively creating a composition comprising cumin, an oil, and antiseptic and a perfume/flavor.

One of ordinary skill in the art would have been motivated to do this to prepare a more effective topical composition for treating open wounds and hemorroids.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Joynes whose telephone number is (571) 272-0597. The examiner can normally be reached on Mon.-Thurs. 8:30 - 6:00, alternate Fri. 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert M. Joynes
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